

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BOARD OF TRUSTEES OF THE OMAHA
CONSTRUCTION INDUSTRY PENSION
PLAN,

Plaintiff,

vs.

KOTAS ENTERPRISES, LLC,

Defendant.

8:23CV502

**ORDER ACCEPTING FINDINGS AND
RECOMMENDATION AND IMPOSING
SANCTIONS FOR CONTEMPT OF
COURT**

This case is before the Court on the April 8, 2025, Findings, Recommendation, and Order by United States Magistrate Judge Ryan C. Carson. [Filing 31](#). The Findings, Recommendation, and Order followed Judge Carson's hearing on an Order to Show Cause held on March 18, 2025, Filing 26 (minutes), resulting from Plaintiff's Motion for an Order in Aid of Execution pursuant to Fed. R. Civ. P. 70(d), which included a request for contempt sanctions against Defendant if documents that this Court previously ordered Defendant to provide were not provided. [Filing 19](#). In the pertinent parts of his Findings, Recommendation, and Order, Judge Carson provided a Certification of Facts, [Filing 31 at 2–5](#); a recommendation that Defendant be found in contempt of Court, [Filing 31 at 5–6](#); a recommendation on an appropriate sanction, [Filing 31 at 6–8](#); and a determination that while additional sanctions were available, Judge Carson would not recommend them at this time, [Filing 31 at 8–9](#).

Judge Carson then recommended the following pursuant to 28 U.S.C. § 636(b):

1. That defendant, Kotas Enterprises, LLC be found in contempt of court until such time as Defendant purges the contempt by producing the documents as ordered by the District Court and producing a representative for the deposition, as ordered above.

2. That attorney fees and costs be awarded in the amount of \$ 8,966.50 related to the Partial Default Judgment, Plaintiff's Motion for Order in Aid of Execution, and the resulting Show Cause Order and Hearing.

[Filing 30 at 9](#). No party has filed objections to the pertinent Findings and Recommendation within the time allowed by [28 U.S.C. § 636\(b\)\(1\)\(C\)](#) and [Federal Rule of Civil Procedure 72\(b\)\(2\)](#).

Pursuant to [28 U.S.C. § 636\(b\)\(1\)](#) and [Federal Rule of Civil Procedure 72\(b\)\(3\)](#), a district court must review de novo the parts of a magistrate judge's findings and recommendation on a dispositive or non-dispositive matter to which timely objections have been made. *See* [28 U.S.C. § 636\(b\)\(1\)](#); [Fed. R. Civ. P. 72\(b\)\(3\)](#); *accord Gonzales-Perez v. Harper*, 241 F.3d 633, 636 (8th Cir. 2001) ("When a party timely objects to a magistrate judge's report and recommendation, the district court is required to make a de novo review of the record related to the objections. . . ."). On the other hand, neither the applicable statute, rule, nor case law requires the Court to conduct a de novo review of a magistrate judge's findings and recommendation when no objections are filed. *See* [28 U.S.C. § 636\(b\)\(1\)](#) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made."); [Fed. R. Civ. P. 72\(b\)\(3\)](#) ("The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to."); *Thomas v. Arn*, 474 U.S. 140, 149–50 (1985) (explaining that nothing in § 636(b)(1) requires a district judge to apply some lesser standard of review than de novo when no objections are filed). Nevertheless, the Court deems it prudent to review Findings and Recommendations to which no objections are filed at least for clear error. *See, e.g., Grindler v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996) (noting that when no objections are filed "[the district court judge] would only have to review the findings of the magistrate judge for clear error"). The reviewing district court judge is free to "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." [28 U.S.C. § 636\(b\)\(1\)](#); [Fed. R. Civ. P. 72\(b\)\(3\)](#). If desired, a reviewing district court judge may

“receive further evidence or recommit the matter to the magistrate judge with instructions.” *Id.*; Fed. R. Civ. P. 72(b)(3).

The Court has reviewed the record and finds no error—clear or otherwise—in Judge Carson’s pertinent Findings and Recommendation in light of his careful consideration of the facts and application of the law. See *Grinder*, 73 F.3d at 795. Accordingly,

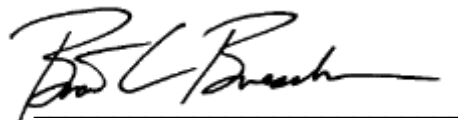
IT IS ORDERED that the Court accepts the recommended disposition of the request for contempt sanctions in the Findings, Recommendation, and Order, [Filing 31](#), pursuant to 28 U.S.C. § 636(b)(1), and Federal Rule of Civil Procedure 72(b)(3), and based on Judge Carson’s findings and recommendation,

1. Defendant, Kotas Enterprises, LLC, is found in contempt of Court until such time as Defendant purges the contempt by producing the documents as ordered by the District Court and producing a representative for the deposition, as ordered in Judge Carson’s Findings, Recommendations, and Order, [Filing 31](#); and

2. Plaintiff is awarded attorney’s fees and costs in the amount of \$ 8,966.50 related to the Partial Default Judgment, Plaintiff’s Motion for Order in Aid of Execution, and the resulting Show Cause Order and Hearing.

Dated this 7th day of May, 2025.

BY THE COURT:

A handwritten signature in black ink, appearing to read "B. C. Buescher", written over a horizontal line.

Brian C. Buescher
United States District Judge